

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OSIE L. WHITE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Atlanta, Ga.

*Docket No. 96-2582; Submitted on the Record;
Issued December 21, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained stress in the performance of duty causally related to factors of his federal employment.

On October 30, 1993 appellant, then a 46-year-old contact representative, filed an occupational disease claim, alleging that factors of employment led to stress. He stated that being questioned by supervisors regarding a fall at work caused his condition.¹ Appellant had stopped work on August 24, 1993. By decision dated June 16, 1994, the Office denied the claim, finding fact of injury not established. The Office noted that there was no medical evidence explaining what employment factors caused appellant's condition. Following appellant's request for reconsideration, by decision dated November 21, 1994, the Office denied modification of the prior decision. Appellant again requested reconsideration and by decision dated December 7, 1995, the Office vacated the November 21, 1994 decision.² In a second decision dated December 7, 1995, the Office denied the claim, finding that appellant had not established a compensable factor of employment. Appellant again requested reconsideration and by decision dated May 29, 1996, the Office denied modification of the prior decision. The instant appeal follows.

In support of his claim, appellant submitted statements in which he indicated that the increased stress had been a gradual occurrence, that he was harassed by his supervisor who prepared unfair performance appraisals which were later revised, that when he was not selected for a promotion for which he was qualified he felt there was a conspiracy against him to stop

¹ The record indicates that appellant fell at work on August 24, 1993. The claim was adjudicated under the Office of Workers' Compensation Programs number A6-579365 and on June 8, 1994 was accepted for low back strain, for which he received wage-loss benefits. The instant case was adjudicated under Office number A6-584776.

² The Board notes that the Office improperly identified the prior Office decision as dated November 12, 1994.

upward mobility, that he was not allowed to serve as a volunteer for a party preparation committee, that he was not given an individual development plan in a timely fashion, that he was not considered for temporary assignments which would have enhanced his skills, that he was criticized by his supervisor, that he was monitored twice as much as other employees, and that he was placed in a “front line” position in retaliation for filing grievances and Equal Employment Opportunity (EEO) complaints. Appellant also indicated that employment-related stress led to alcohol abuse and physical complaints of hypertension, kidney failure, asthma and chronic hepatitis.

Appellant also submitted performance appraisals for the years 1988 to 1993. The record indicates that the appraisal of record for the period April 10, 1987 to April 6, 1988 was revised regarding the rating for application of tax law. An April 26, 1988 memorandum to appellant from his supervisor, Marguerite Goodrum, advised that his evaluation was improved to a full successful rating, “after carefully reviewing the contents” of information submitted by appellant. A February 20, 1992 employing establishment memorandum signed by Jackie Holland, Chief, Taxpayer Assistance Branch II, regarding a grievance filed regarding appellant’s performance appraisal for the period September 8, 1990 through September 7, 1991 states:

“[P]er mutual agreement, I will offer to remove the statement ‘[appellant’s] numerical rating remains the same as he was not given sufficient notification of a less than satisfactory rating’ on the first page of the narrative and to remove all wording that states that [appellant’s] performance was minimally successful.”

An informal EEO settlement agreement between appellant and the employing establishment signed January 21, 1993 provides that the employing establishment would remove a suspension letter dated November 19, 1992 and change a total of 20 hours of absent without leave to leave without pay. The agreement states that this does not constitute an admission by the employing establishment of any violation of application of civil rights laws or other statute, rule or regulation.

The record contains a position description that states that a contact representative provides technical information to taxpayers on a wide range of tax issues, noting that many contacts originate because of taxpayer complaints and “often involve irate taxpayers.” An employing establishment memorandum indicates that appellant was referred to the employee assistance program in October 1992 because of performance and leave problems and a Social Security Administration disability determination indicates that appellant was considered disabled, effective August 24, 1993, with a primary diagnosis of affective disorders and a secondary diagnosis of organic mental disorders.

Appellant also submitted substantial medical evidence that documented several hospitalizations and included diagnoses of paranoid schizophrenia and a 30-year history of alcohol dependency with impaired cerebral function and organic brain damage. The medical evidence that discusses the cause of appellant’s condition includes a January 5, 1994 report in which Dr. James S. Cheatham, a Board-certified psychiatrist, advised that, because of appellant’s chronic, severe mental illness, he experienced substantial difficulties in relating to others and/or adjusting to a work environment. In a February 4, 1994 discharge summary, Dr. Jeffrey H. Flatow, a Board-certified psychiatrist, noted that appellant had been admitted for alcohol abuse,

depression, and paranoid delusions, that he reported that the employing establishment was “bothering him again.” Dr. Flatow advised that appellant had a fixed delusional system regarding the employing establishment, generally exhibiting a paranoid trend. In a July 15, 1994 clinical summary, Vickie M. Jester, a licensed social worker, stated that the “employment situation and environment at the [employing establishment] could have indeed precipitated, aggravated and accelerated [appellant’s] mental condition,” stating that the possible termination and perceived hostility produced extreme stress. In a September 12, 1994 report, Ms. Jester advised that appellant’s fall at work also aggravated his condition. Regarding his physical condition, in a March 9, 1993 report, Dr. Gairy Hall, a Board-certified internist, diagnosed acute pancreatitis, erosive gastritis and erosive esophagitis and noted a past history of hypertension, hepatitis and alcohol abuse. He did not provide a cause of appellant’s condition.

The employing establishment provided an undated statement from Linda Adams, appellant’s immediate supervisor. She indicated that as part of his job, appellant would occasionally receive telephone calls from irate customers which could be stressful. She acknowledged that conflicts with coworkers and supervisors had occurred, advising that appellant filed two EEO complaints against the employing establishment. She stated that in the first case, an EEOC judge ruled in favor of the employing establishment, and in the second a hearing was scheduled but not conducted due to appellant’s absence from work. Ms. Adams indicated that after appellant was rated unacceptable on a January 1993 appraisal, he was granted 60 days in which to improve but did not. This resulted in a proposal to terminate him, effective December 3, 1993. Regarding appellant’s contention that he was questioned regarding the fall at work, Ms. Adams stated that the supervisors did not question whether appellant fell on the job, rather required that he provide the “ordinary and necessary medical documentation” to support the injury claimed.

The Board finds that appellant has not established that he sustained stress in the performance of duty causally related to factors of employment.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁵ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁶

Regarding appellant's contention that he was not selected for a promotion for which he was qualified, that he was not allowed to serve as a volunteer for a party preparation committee, and that he was not considered for temporary assignments, as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of coverage under the Act.⁷ While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment,⁸ mere perceptions are insufficient.⁹ In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.¹⁰ In this case, there is nothing in the record to indicate that the Office acted in an improper manner. Similarly, regarding appellant's contention that he was monitored more than other employees, appellant did not submit any evidence that such was the case.

Regarding appellant's contention that his stress was employment related because of problems relating to his claim for a back injury,¹¹ matters relative to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of duty,¹² as the processing of compensation claims bears no relation to appellant's regularly or specifically assigned duties.¹³ The employing establishment indicated that it merely requested that appellant provide the "ordinary and necessary" documentation of the fall at work. Appellant has,

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *See Michael L. Malone*, 46 ECAB 957 (1995).

⁸ *Id.*

⁹ *See Mary A. Sisneros*, 46 ECAB 155 (1994).

¹⁰ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

¹¹ *See supra* note 1.

¹² *See Bettina M. Graf*, 47 ECAB ____ (Docket No. 94-1970, issued August 1, 1996).

¹³ *See Martha L. Watson*, 46 ECAB 407 (1995).

therefore, failed to demonstrate error abuse on the part of the employing establishment regarding these administrative matters and they are not compensable employment factors.¹⁴

For harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.¹⁵ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment,¹⁶ and an employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁸ In the present case, appellant has not submitted evidence corroborating her various allegations of harassment by supervisors at the employing establishment.

While appellant filed grievances and EEO complaints, this, by itself, does not establish that workplace harassment or unfair treatment has occurred.¹⁹ The Board has frequently explained that frustration over performance evaluations relates to administrative or personnel matters which, while generally related to employment, are an administrative function of the employer rather than a regular or specially assigned duty of the employee and that, absent error or abuse in the administration of a personnel matter, coverage will not be afforded.²⁰ In the present case, however, the employing establishment acknowledged that there were errors in appellant's 1988 and 1992 performance appraisals and revised them. Because these errors were acknowledged by the employing establishment, they are compensable factors of employment. However, it still must be demonstrated by rationalized medical evidence that this factor caused or contributed to appellant's emotional condition. As the record in this case contains no medical evidence to support that appellant developed an identifiable emotional condition caused by accepted employment factors, he failed to meet his burden of proof that he sustained an employment-related emotional condition.²¹ Likewise, the record is devoid of medical evidence addressing the cause of appellant's physical complaints. He therefore failed to establish that he sustained employment-related stress.

¹⁴ See *Margreate Lublin*, 44 ECAB 945 (1993).

¹⁵ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

¹⁶ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁷ *William P. George*, 43 ECAB 1159 (1992).

¹⁸ See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁹ See *Parley A. Clement*, 48 ECAB ____ (Docket No. 95-566, issued January 17, 1997).

²⁰ See *James E. Woods*, 45 ECAB 556 (1994).

²¹ The Board notes that, while Ms. Jester advises that appellant's emotional condition is employment related, she is not considered a "physician" as defined under the Act and, therefore, her opinion cannot be considered as competent medical evidence. 5 U.S.C. § 8101(2).

The decisions of the Office of Workers' Compensation Programs dated May 29, 1996 and December 7, 1995 are hereby affirmed.

Dated, Washington, D.C.
December 21, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member